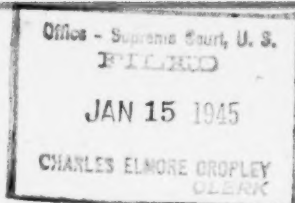


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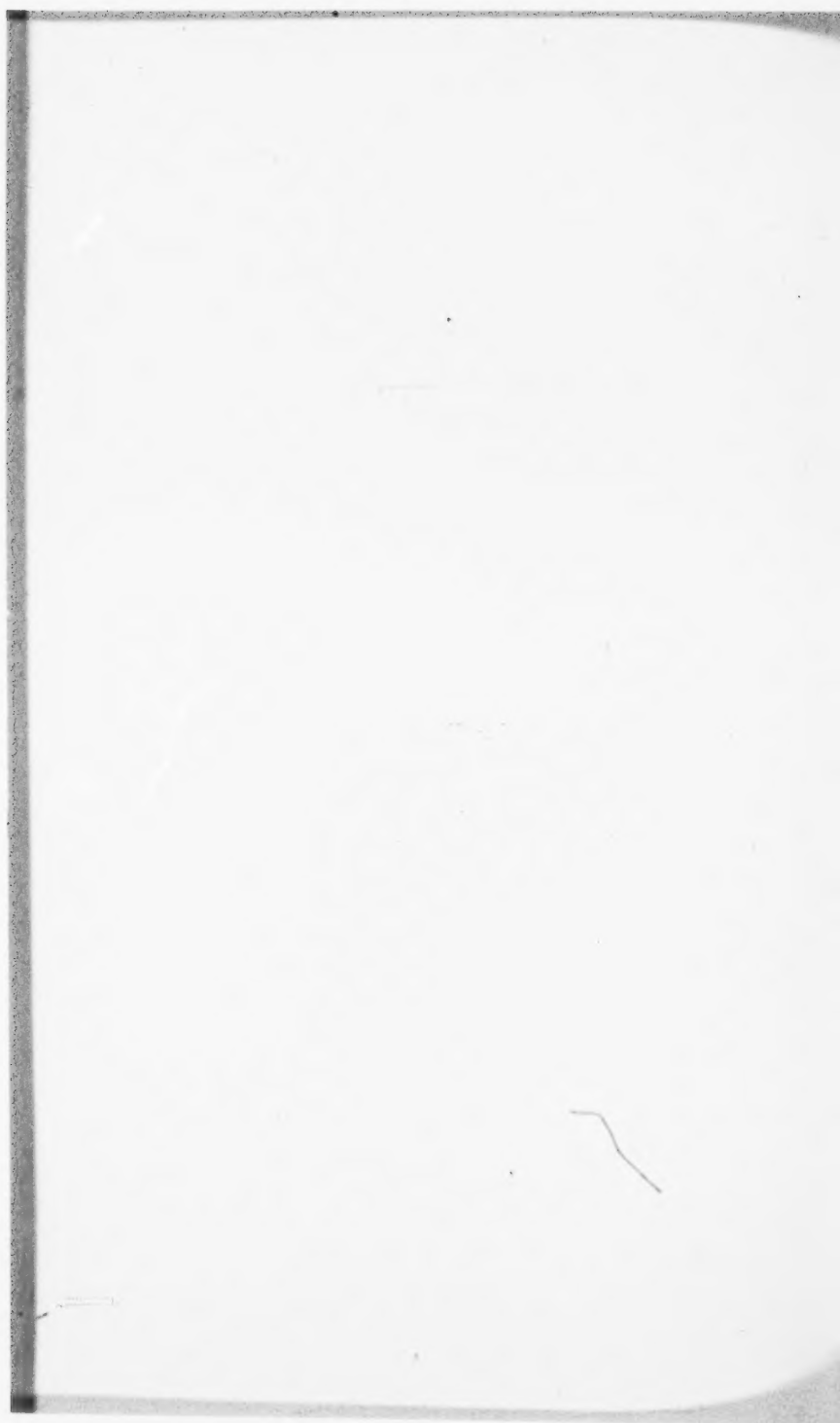
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944

JAMES O. GREENAN AND EDITH GREENAN,
Petitioners,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF

GEO. B. THATCHER,
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Reno, Nevada,
Counsel for Petitioners.



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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

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vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

*To the Honorable Harlan Fiske Stone, Chief Justice of
the United States, and the Associate Justices of the
Supreme Court of the United States:*

Your petitioners respectfully show:

I

Summary and Statement of Matters Involved

The petitioners James O. Greenan and Edith Greenan were husband and wife at all times during the taxable years 1935, 1936, 1937 and 1938. No income tax return

was filed by either for the years 1935 and 1936. Greenan and his then wife, Edith Greenan, resided in the Philippine Islands during those two years and filed no income tax returns for them, claiming that as 80 per centum or more of the gross income of James O. Greenan was derived from sources within the Philippine Islands and 50 per centum or more of his gross income was derived from the active conduct of a trade or business within the Philippine Islands they were exempt from Federal income taxes and were not required to file income tax returns for those two years (R. 8, pars. 2 and 4). A return or returns were filed for the year 1938 (R. 31), but whether they were joint or separate returns does not appear from the record.

Presumably, the Commissioner for the years 1935 and 1936 made a return for the parties under the provisions of USCA, Title 26, Internal Revenue Code, Section 3612, which provides that when a person fails to make or file a return prescribed under the authority of law or by regulation, the Commissioner may from his own knowledge or from such information as he can obtain from testimony or otherwise make a return.

On May 7, 1943, the Commissioner of Internal Revenue determined a deficiency income tax liability against the petitioners James O. Greenan and Edith Greenan for the taxable years ending December 31, 1935, December 31, 1936, and December 31, 1938, in the sum of \$159,262.86 and penalties of \$39,472.68 and on the same day gave written notice thereto to the petitioners here (R. 25). The deficiency was joint and a joint notice was sent to each of the petitioners (R. 27). The assertion by the Commissioner was one of joint liability as shown by the deficiency letter and made clear because there is no attempt either in the deficiency letter or in the computations to apportion the tax liability between the taxpayers in accordance with their respective incomes. A joint tax was assessed (R. 25-38).

Within the ninety day period fixed by law and on July 17, 1943, the petitioners James O. Greenan and Edith Greenan filed in the Tax Court of the United States their joint petition for a redetermination of the deficiency set forth by the Commissioner in his notice of May 7, 1943 (R. 2-42). Said petition was signed by counsel and was verified by James O. Greenan on his own behalf and on behalf of Edith Greenan, co-petitioner. In this verification, James O. Greenan made oath that "Edith Greenan has no knowledge of or concerning the matters and things involved herein;" (R. 24).

The Petition in the Tax Court recites:

"5. That petitioner Edith Greenan has no knowledge of or concerning the matters and things herein alleged or of or concerning the alleged deficiency income tax the subject hereof.

"6. That hereinafter the word 'petitioner' will be deemed to refer only to the petitioner James O. Greenan unless the contrary affirmatively appear" (R. 8).

The Petition in the Tax Court contained the names of both taxpayers as petitioners in its caption (R. 2) and recited in the opening statement: "The above named petitioners, James O. Greenan and Edith Greenan, hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated May 7, 1943 and bearing the following symbols: IRE: 90-D HEA (R. 2, 3). The Petition also sets forth the addresses of the petitioners, jurisdictional facts, the taxes involved, assignments of error, and statement of facts upon which petitioners grounded their petition for review and in support of the assignments of error (R. 2-24).

On August 10, 1943, the Commissioner, through his general counsel, filed in the Tax Court of the United States

his Answer to the Petition. The Answer was an answer to the Petition of both petitioners. The Answer states:

“Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the *above-named petitioners*, admits and denies as follows:” (R. 42). (Italics ours.)

The Answer continues, admitting certain of the allegations of the Petition, specifically denying others, denying other allegations for lack of information, and generally and specifically denying each allegation in the Petition not admitted, qualified or previously denied by the Answer (R. 42-46), and concludes with a prayer as follows:

“Wherefore, it is prayed that the Commissioner’s determination be approved and the *petitioners’* appeal denied” (R. 43, 44). (Italics ours.)

On the same day, and subsequent to the filing of the Answer according to the Docket Entries (R. 1), the Commissioner filed a motion to dismiss (R. 46, 47) the proceedings in the Tax Court insofar as it involved the petitioner Edith Greenan upon the following grounds:

“The deficiency letter from which this petition is filed states that duplicate originals of the joint notice of deficiency is sent to each spouse. Paragraph 4, page 8 of the petition alleges that the parties were divorced in 1941. Paragraph 5, page 8 of the petition alleges that ‘Petitioner Edith Greenan has no knowledge of or concerning the matters and things herein alleged or of or concerning the alleged deficiency income tax the subject hereof.’ Paragraph 6, page 8 of the petition alleges that ‘hereinafter the word “petitioner” will be deemed to refer only to the petitioner James

O. Greenan unless the contrary affirmatively appear.' Except for the allegations above referred to in the petition, it does not appear that petitioner Edith Greenan has any interest in this proceeding.

"The petition is not signed or verified by Edith Greenan as required by Rule 6 of the Rules of Practice before the Tax Court of the United States."

Both the Answer and the motion were served upon Geo. B. Thatcher as counsel (R. 48) and notice of the hearing of the motion to dismiss in the Tax Court was likewise served on Geo. B. Thatcher (R. 48).

On September 24, 1943, the Tax Court granted the motion of the Commissioner and entered its order dismissing the proceeding in the Tax Court for lack of jurisdiction insofar as it relates to Edith Greenan (R. 49). From this order and decision of the Tax Court, the petitioner Edith Greenan petitioned the United States Circuit Court of Appeals for the Ninth Circuit for review, in which petition James O. Greenan joined (R. 50-53).

On October 16, 1944, the United States Circuit Court of Appeals for the Ninth Circuit filed its opinion (R. 65-67) and entered its judgment affirming the decision of the Tax Court of the United States (R. 68).

II

Jurisdiction

Upon the facts and recitals above, the jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended (U. S. C. A., Title 28, Section 347).

The date of the entry of the judgment of the Circuit Court of Appeals for the Ninth Circuit sought to be reviewed is October 16, 1944.

III

The Questions Presented

The Commissioner contended:

1. That the petition for redetermination of deficiency insofar as Edith Greenan is concerned (a) did not purport to be her petition in that it prayed for relief to James O. Greenan; (b) was signed by counsel on behalf of James O. Greenan only; (c) was not signed by Edith Greenan or verified by her, and that the verification of the petition by James O. Greenan merely recited that he verified on behalf of Edith Greenan; and that for these alleged deficiencies, and based upon the decision in *Schwartz v. Commissioner*, 140 F. (2d) 956 (C. C. A. 9), the decision of the Tax Court should be affirmed.

2. That the rule that one joint obligor is entitled to insist that his co-obligor join with him in the assertion of right or defense of liability does not apply to petitioners in the Tax Court because its jurisdiction is purely statutory, and, further, that the obligation could not be joint but could only be joint and several or merely several.

The petitioner Edith Greenan and her co-petitioner James O. Greenan contend:

A. That verification of the Petition is a formal or modal matter and not jurisdictional in the Tax Court, and that this is true as to the signature of the petitioner Edith Greenan; that the Petition was signed by counsel (R. 23) and verified by James O. Greenan, one of the petitioners on behalf of himself and his co-petitioner Edith Greenan (R. 24).

B. That the rules requiring verification are merely procedural and do not limit or control the statutory jurisdiction conferred upon the Tax Court.

C. That the Commissioner having answered to the merits, thereby having joined issue on matters of fact, waived all formal defects as to the signature of counsel, the signature of the petitioner, or the lack of separate verification on the part of Edith Greenan.

D. That the notice of deficiency was joint and it was therefore not necessary for both parties to sign and jointly verify the petition, but that it was sufficient if it was and is signed or verified by one of the parties jointly named in the notice of deficiency.

E. That as verifications, signatures, and matters of like nature are not jurisdictional, the Petition should not have been dismissed on the ground that the Tax Court had no jurisdiction but at the most the petitioner Edith Greenan should have been ordered or given an opportunity to correct the defects, if any, by amendment.

IV

Reasons for Granting the Petition

1. The decision and opinion of the United States Circuit Court of Appeals for the Ninth Circuit is in conflict with the decisions of the same court and with other Circuit Courts. See

Burnet v. First National Bank of Fresno 46 Fed. (2d) 631 (CCA 9);

Leidigh Carriage Co. v. Stengel, 95 Fed. 637, 641;

Continental Petroleum Co. v. United States 87 Fed. (2d) 841 (CCA 10).

2. That the United States Circuit Court of Appeals for the Ninth Circuit has decided an important question of Federal law which has not been, but should be, settled by this Court.

3. That the United States Circuit Court of Appeals for the Ninth Circuit has decided a Federal question in a way probably in conflict with the application decision of this Court.

4. That the United States Circuit Court of Appeals for the Ninth Circuit in its opinion and decision has so far departed from the usual and accepted course of judicial procedure or so far sanctioned such a departure by the Tax Court of the United States as to call for an exercise of this Court's power of supervision.

5. That the United States Circuit Court of Appeals for the Ninth Circuit has decided a general question of law probably untenable or in conflict with the great weight of authority.

6. This Court granted a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit in the case of *Marie E. Schwartz v. Commissioner*, 140 Fed. (2d) 956, by order entered June 12, 1944 (88 L. Ed. page 1184), where identical questions to those here presented were involved.

7. The decision and opinion of the United States Circuit Court of Appeals for the Ninth Circuit and the order of the Tax Court dismissing the Petition as respects Edith Greenan was contrary to previous decisions of the Tax Court and its predecessor, the Board of Tax Appeals.

See *National Bank of Commerce et al., Trustees v. Commissioner of Internal Revenue*, 34 B. T. A. 119, at page 125;

Gibson Amusement Co. v. Commissioner of Internal Revenue, 22 B. T. A. 1212 at 1213;

Monitor Amusement Co. v. Commissioner of Internal Revenue, 22 B. T. A. 1214 at 1216.

WHEREFORE petitioners pray that a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit issue out of this Court to the United States Circuit Court of Appeals for the Ninth Circuit commanding said court to certify and send to this Court for its review and determination a full and complete transcript of the record and proceedings in the case entitled on its Docket "No. 10,653, James O. Greenan and Edith Greenan, Petitioners, vs. Commissioner of Internal Revenue, Respondent.", and that said judgment of said United States Circuit Court of Appeals for the Ninth Circuit be thereupon reversed by this Honorable Court.

Respectfully submitted,

GEO. B. THATCHER,
THATCHER & WOODBURN,
206 North Virginia Street,
Reno, Nevada,
Counsel for Petitioners.

Certificate of Counsel

The undersigned, counsel of record for the petitioners, hereby certifies that the foregoing petition in his opinion is well founded and that said petition is not interposed for the purpose of delay.

GEO. B. THATCHER.



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Respondent

BRIEF IN SUPPORT OF PETITION

I

Opinions Below

There was no opinion by the Tax Court of the United States. The order of the Tax Court dismissing the petition as to Edith Greenan appears in the record, page 49. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit, affirming the order and judgment of the Tax Court (R. 65) is reported at 145 Fed. (2d), p. 134.

II

Jurisdiction

The date of the judgment of the United States Circuit Court of Appeals for the Ninth Circuit now sought to be reviewed is October 16, 1944.

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended.

III

Statement of the Case

The statement of the case in the foregoing and attached petition is hereby referred to, and as it embodies all essential facts and proceedings in the interest of brevity will not be repeated.

IV

Specifications of Error

1. That the United States Circuit Court of Appeals for the Ninth Circuit erred in entering its judgment affirming the decision of the Tax Court of the United States in said cause wherein the petition for redetermination of the tax liability of the petitioners James O. Greenan and Edith Greenan in said Tax Court was dismissed as to Edith Greenan (R. 68).

2. That the United States Circuit Court of Appeals for the Ninth Circuit erred in holding and deciding that verification of the petition for redetermination by Edith Greenan was a jurisdictional requisite in the Tax Court of the United States.

3. That the United States Circuit Court of Appeals for the Ninth Circuit erred in holding and deciding that verification was not waived by the filing of the Answer in the Tax Court of the United States on the merits.

4. That the United States Circuit Court of Appeals for the Ninth Circuit erred in determining and in deciding that Edith Greenan had not made herself a party to the proceedings in the Tax Court of the United States for redeter-

mination of the deficiency, and in deciding that the petition in said Tax Court did not even purport to be the petition of Edith Greenan within the meaning of the Tax Court regulations.

5. That the United States Circuit Court of Appeals for the Ninth Circuit erred in failing to hold and determine that verification by Edith Greenan of a petition for redetermination filed in the Tax Court of the United States is a formal or modal matter and not one of jurisdiction.

6. The petition for redetermination filed by James O. Greenan and Edith Greenan in the Tax Court of the United States was a joint petition involving a joint deficiency and assessment of both petitioners as a taxable unit and as though the return were that of a single individual. The United States Circuit Court of Appeals for the Ninth Circuit erred in failing and neglecting to hold and determine that the verification or signature by one of the petitioners is sufficient under the rules of the Tax Court of the United States, and in holding that in such case the rules of practice of the Tax Court of the United States require as a jurisdictional prerequisite that each petitioner must separately verify the petition.

Argument

1. RULE 6 OF THE TAX COURT OF THE UNITED STATES WHICH REQUIRES VERIFICATION OF A PETITION FOR REDETERMINATION IS A FORMAL OR MODAL MATTER AND NOT ONE OF JURISDICTION.

Rule 6 of the Rules of Practice before the Tax Court of the United States, 26 U. S. C. A. Int. Rev. Code following section 5011, requires that the petition shall contain:

“ * * *

“(g) The signature of the petitioner or that of his counsel.

“(h) A verification by the petitioner; provided that where the petitioner is sojourning outside of the United States or is a non-resident alien, the petition may be verified by a duly appointed attorney in fact, who shall attach to the petition a copy of the power of attorney under which he acts and shall state in his verification that he acts pursuant to such power, that such power has not been revoked; that petitioner is absent from the United States. * * *”

The petition for redetermination filed in the Tax Court of the United States did not contain the verification of Edith Greenan, one of the petitioners therein (R. 24). The Petition recited:

“5. That petitioner Edith Greenan has no knowledge of or concerning the matters and things herein alleged or of or concerning the alleged deficiency income tax the subject hereof.

“6. That hereinafter the word ‘petitioner’ will be deemed to refer only to the petitioner James O. Greenan unless the contrary affirmatively appear.” (R. 8)

The Petition was verified by James O. Greenan, one of the petitioners, on his own behalf and on behalf of Edith Greenan, co-petitioner, and the verification contained the statement “that Edith Greenan has no knowledge of or concerning the matters and things involved herein”. This verification was subscribed and sworn to by James O. Greenan (R. 24).

In Burnet v. First National Bank of Fresno, 46 Fed. (2) 631 (C. C. A. 9)

the Commissioner interposed a motion to dismiss a petition for review for the reason that the petition for appeal from the determination of the Commissioner to the Board of Tax

Appeals was not properly verified. The court held that the motion was without merit. The court said:

“The motion is without merit.

“In discussing a defective certification to a petition, in *Leidigh Carriage Co. v. Stengel* (C. C. A.), 95 Fed. 637, 641, Judge Taft said:

“ ‘The second objection embodied in the second and sixth assignments of error is that the petition and application were not properly verified. The petition and application were, as we have seen, signed in the names of the petitioners by the attorneys, and there was a verification showing that these attorneys were attorneys of record, and that the facts were true. We do not propose now to pass upon the question whether this petition was verified in proper form. The petition was answered by all the parties in interest, without any objection to its form. We have not the slightest doubt that, under any system of pleading, such a pleading to the merits waives all formal or modal matter, and does not reach to the jurisdiction.’ ”

In *Continental Petroleum Co. v. United States*, 87 Fed. (2d) 91 (CCA 10)

the taxpayer by letter requested an extension of time for the filing of a petition before the Board of Tax Appeals. The Board filed the letter as a petition for redetermination and when the petition was received it was stamped “Amended Petition Appeal Filed 2-8-27”. The Board treated it as an amended petition. An answer was filed by the Commissioner and served. The decision of the Board of Tax Appeals was against the taxpayer, pursuant to a written stipulation and agreement. The taxpayer paid the deficiency but subsequently brought an action to recover upon an alleged overpayment of income taxes, to

which suit a plea of *res adjudicata* was interposed. The court said:

"It has been held that a failure to verify a petition for redetermination in accordance with the rule does not withhold jurisdiction of the Board. *Barnet v. First Nat. Bank of Fresno* (C. C. A.), 46 F. (2d) 631. Meticulous compliance with every requirement of the rule concerning the contents of a petition is not essential to the exercise of the Board's jurisdiction. A reasonable discretion in determining what constitutes substantial compliance with it, must be reposed in the Board."

Subsequent to the decision in *Barnet v. First National Bank*, *supra*, the Tax Court treated the decision in that case as the law governing it in

National Bank of Commerce, et al., Trustees v. Commissioner of Internal Revenue, 34 B. T. A. 119, at page 125,

where the Board said:

"Whether both trustees should have either signed or verified the amended petitions need not be considered since it has been held that the verification of a petition is not a matter of jurisdiction. *Gibson Amusement Co.*, 22 B. T. A. 1214; *Barnet v. First National Bank of Fresno*, 46 Fed. (2d) 631."

To the same effect, see

Gibson Amusement Co. v. Commissioner of Internal Revenue, 22 B. T. A. 1212 at 1213;

Monitor Amusement Co. v. Commissioner of Internal Revenue, 22 B. T. A. 1214 at 1216.

See also *Ethel Weisser, v. Commissioner*, 32 B. T. A. 755;

Nellie L. Rhodes, v. Commissioner, 44 B. T. A. 1315.

In *Baldwin v. Commissioner*, 94 Fed. (2d) 355, 356 (CCA 9)

it appeared that in the estate of Janet M. Baldwin there were two executors. The petition was filed by one only. The petition did not comply with that portion of Rule 5, which required "a majority of the fiduciaries shall either sign or verify the petition". This Court said:

"The Board of Tax Appeals is specifically authorized to prescribe rules for the conduct of proceedings before it. Section 907 (a) of the Revenue Act of 1924, as amended by section 601 of the Revenue Act of 1928, 26 U. S. C. A. § 611. Such rules have the force and effect of law. *Bankers' Pocahontas Coal Co. v. Burnet*, 287 U. S. 308, 53 S. Ct. 150, 77 L. Ed. 325; *Goldsmith v. Board of Tax Appeals*, 270 U. S. 117, 46 S. Ct. 215 70 L. Ed. 494. The rules prescribed are merely procedural and cannot under any circumstances limit or control the statutory jurisdiction conferred upon the Board. *Board of Tax Appeals v. United States ex rel. Shults Bread Co.*, 1930, 59 App. D. C. 161, 37 F. 2d 442, certiorari denied, 281 U. S. 731, 50 S. Ct. 246, 74 L. Ed. 1147; *Weaver v. Blair*, 1927, 3 Cir., 19 F. 2d 16."

See also to the same effect:

Board of Tax Appeals v. United States, 37 Fed. (2d) 442.

We think the rule that verification is not jurisdictional but merely formal is well stated in

Commercial Bank & T. Co. v. Jordan, 278 Pac. 832, 65 A. L. R. 968-972

where the Supreme Court of Montana said:

"Verification of pleadings is not necessary to vest jurisdiction in the courts. Here, at most, the verifica-

tion was defective and upon proper and timely objection the defendant in that action could have taken advantage of the defect, but, not having done so, the objection was waived. As was said by this court in *Johnson v. Puritan Min. Co.*, 19 Mont. 30, 47 Pac. 337: "It is also held that the verification is not a part of the pleadings, strictly speaking, and is not necessary to vest jurisdiction. "Like any other formal matter, its absence is waived by failure to object. And if its entire absence does not affect the jurisdiction, of course mere defects cannot." *Van Fleet*, Collateral Attack, § 251."

2. THE COMMISSIONER ANSWERED TO THE MERITS OF THE PETITION AND THEREBY WAIVED ALL FORMAL AND MODAL MATTERS AND TECHNICAL DEFECTS IN THE PETITION.

In the Tax Court of the United States the Commissioner filed an Answer. The caption of the Answer was identical with the caption of the Petition. The Answer was an answer to the Petition of both petitioners. It was not limited to the Petition of James O. Greenan, and it contained no reservation of any objection to the form of the Petition (R. 42-46). The opening sentence of the Answer is as follows:

"Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the *above-named petitioners*, admits and denies as follows:" (R. 42.) (Italics ours.)

The Answer admits certain of the allegations of the Petition, denies others specifically, denies others for lack of information, and generally and specifically denies each allegation in the Petition not otherwise admitted, qualified or denied by the Answer. This pleading was a pleading to the merits. The prayer of the Answer is as follows:

"Wherefore, it is prayed that the Commissioner's determination be approved and the *petitioners'* appeal denied." (R. 45, 46.) (Italics ours.)

It is clear from the Answer that the Commissioner was answering the Petition of both petitioners and not one of them. Upon the filing of that Answer, the cause in the Tax Court was at issue on the merits under Rule 16 of that court, which provides:

“A proceeding shall be deemed at issue upon the filing of the answer unless a reply is required under Rule 15, in which event the proceedings shall be deemed at issue upon the filing of the reply.”

In light of these matters and of the rules, we urge that the Commissioner had answered pleading to the merits, and that the objections urged by the Commissioner were thereby waived.

In

41 American Jurisprudence Sec. 391

it is said:

“The rule as to waiver of defects or omissions in pleadings has been applied to various matters not going to the jurisdiction of the subject matter or to the sufficiency of the pleading to state a cause of action. A litigant, it has been held, may waive an objection because of the form of the action; failure to allege performance of statutory action; duplicity; uncertainty and indefiniteness of allegations; inconsistency or repugnancy of allegations; *want of or defects in verification or in the conclusion or prayer*; defective pleading of waiver, knowledge, or other matters not of a vital character.” (Italics ours.)

In

41 American Jurisprudence Sec. 210

the following applicable rule is laid down:

“It is a well-settled common-law rule which is generally applied under the codes and modern practice statutes that a party cannot both demur and answer to the

same parts of a declaration or complaint at one and the same time, and if he does so he will be considered as having waived his demurrer."

See also

Oregon R. R. & Navigation Co. v. Dumas, 181 Fed. 781
(C. C. A. 9).

In

United Kansas Portland Cement Co. v. Harvey, 216
Fed. 316-318

the court said:

"If the petition states a good cause of action but is technically defective, it should be raised by demurrer, and the plaintiff thus given an opportunity to amend. When an answer to the merits is filed, it is an admission on the part of the defendant that the petition is not technically objectionable, and no defect of that nature can be taken advantage of thereafter. * * * It is true, under the common-law practice, when pleadings were considered of greater importance than the substantial rights of the parties, this practice was very common, but at this day it is universally recognized that courts are intended to promote the ends of justice and will disregard all technicalities which tend to defeat them."

In

In re Chequasset Lumber Co., 112 Fed. 56 at 58

the court said:

"This authority holds, however, that a defective verification is not jurisdictional, and could not, in any event, do more than check the progress of litigation until the verification should be properly made. But I do not think the motion should prevail even to that extent. It fully appears that the persons who made the verifications were the ones most fully acquainted with the facts, and apparently the only agents of the cor-

poration who had the necessary knowledge to enable them to verify the petition. The verifications are deemed sufficient. *Carriage Co. v. Stengel*, 37 C. C. A. 210, 95 Fed. 637, 641; *Bank v. Craig*, 6 Am. Bankr. R. 381, 382, 110 Fed. 137."

This case is also authority and justification for the verification of the Petition by the petitioner James O. Greenan alone because he was the one most fully acquainted with the facts, it appearing from the Petition (R. 8) and the verification (R. 24) that the petitioner Edith Greenan had no knowledge of or concerning the matters and things alleged in the petition or of or concerning the deficiency income tax the subject thereof or the matters involved in the proceeding.

In

Glaspie v. Kcator, 56 Fed. 203 at 211, 213

the court said:

"The demurrer seems to have been based on the ground that the complaint was defective in not showing with sufficient certainty that any damage was sustained in consequence of the alleged deceit. The point is untenable. The complaint averred generally, in the concluding paragraph, that damages had been sustained in a certain sum, which was all that the pleader was required to aver. But even if the complaint had been defective, as supposed, it was merely a technical defect, which was waived by pleading to the merits, and was cured by the verdict."

3. NEITHER THE COMMISSIONER NOR HIS COUNSEL WERE MISLED OR PREJUDICED BY THE ABSENCE OF VERIFICATION BY EDITH GREENAN, BY THE WORDING OF THE PRAYER, THE DESCRIPTION OF COUNSEL, NOR THE ABSENCE OF SIGNATURE OF EDITH GREENAN.

The Petition filed in the Tax Court of the United States was captioned in the names of "James O. Greenan and

Edith Greenan, Petitioners" (R. 2). The opening sentence of the Petition is as follows:

"The above named petitioners, James O. Greenan and Edith Greenan, hereby petition for a redetermination of the deficiency * * *." (R. 2.)

Paragraph I of the Petition also refers to the "Petitioners" and gives their respective residences. In the same paragraph it is also stated that "No return was filed by the petitioners for the year 1936" (R. 3). Paragraph II of the Petition refers to the mailing of the notice of deficiency to the petitioners (R. 3), and in paragraph III it is the petitioners who make the assignments of error committed by the Commissioner in the determination of the deficiency (R. 4). Again in paragraph V the following appears: "The facts upon which petitioners rely as sustaining their assignments of error are as follows:" (R. 7).

The Answer, as we have previously pointed out, was an answer "to the petition filed by the above-named petitioners" (R. 42), and the prayer was that the "Commissioner's determination be approved and the petitioners' appeal denied" (R. 45, 46). The Answer was to the merits of the Petition of the petitioners, and prayed that the petitioners' appeal be denied. The Answer was served upon Geo. B. Thatcher, whose name appears as counsel (R. 48). Respondent treated and accepted Geo. B. Thatcher as counsel for Edith Greenan as well as James O. Greenan, in giving the notice of the filing and the hearing of the motion to dismiss and in the service of the Answer (R. 48).

Neither the respondent nor his counsel were in any wise misled by the wording of the prayer, the description of counsel, any absence of signature, or the form or lack of verification, nor were they in any wise prejudiced thereby.

The Commissioner and his counsel were in position to and did answer the Petition of the petitioners fully and completely. They could have done or said no more in the Answer (R. 42-46).

In
Barleo Oil Co. v. Alexander, 33 Fed. Supp. 32

the court held:

“Failure to type or print signatures of attorneys under their names or to insert their addresses in connection with their signature to complaint might warrant striking out the pleading, but would not justify dismissal of the case.”

The opening prayer of the Petition (R. 2) should of course be taken in connection with the closing prayer of the Petition, and in construing the Petition all intendments should be resolved in favor of the pleader and to uphold the Petition. The rule is well settled that a prayer is no part of the pleading. It is important where a judgment by default is taken because it there limits the relief which can be accorded. Where there is an answer, however, a different rule prevails. This, we think, is succinctly stated by the Supreme Court of Nevada in the case of

Sugarman Co. v. Morse Bros., 50 Nev. 191, 255 Pac. 1010.

The court there said:

“It is argued that there is no prayer for an injunction in the complaint; hence no error was committed in denying injunctive relief. There is a prayer for general equitable relief. Such a prayer warrants any relief the party is entitled to. *In fact, when there is an answer, the prayer is immaterial*, as has often been held, even by this court.” (Italics ours.)

4. THE DEFICIENCY ASSESSMENT WAS A JOINT ASSESSMENT AGAINST BOTH JAMES O. GREENAN AND EDITH GREENAN JOINTLY, AND A VERIFICATION BY JAMES O. GREENAN, ONE OF THE PETITIONERS, FOR HIMSELF AND ON BEHALF OF EDITH GREENAN WAS SUFFICIENT UNDER RULE 6 OF THE TAX COURT OF THE UNITED STATES.

No return was filed by either of the petitioners for the years 1935 and 1936 for the reasons hereinbefore pointed out (R. 2, 4).

The deficiency letter is a joint notice and letter sent to each of the petitioners and the Commissioner therein claims a joint deficiency for all of the years mentioned—1935, 1936, and 1938 (R. 27). No attempt was made in the deficiency or notice or in the computations and exhibits attached thereto (R. 25-38) to apportion the tax liability between the taxpayers in accordance with their respective incomes. There was but one determination in solido, and the Commissioner asserted and intended to assert thereby a joint liability against the parties.

In

Taft v. Helvering, 311 U. S. 195, 198, 85 Law Ed. 122, 124

this Court, in discussing the Revenue Act of 1921 and the regulations thereunder which permit of the filing of a single joint return by husband and wife, said:

“The argument stresses the words ‘to which either is entitled’ and it is urged that each spouse is entitled only to deduct 15 per cent of his or her separate net income. But we think that this is an inadmissible construction of the statute and is not a necessary construction of the regulation. Such a construction is inconsistent with the premise of the Solicitor’s opinion, above mentioned, that a joint return ‘is treated as the return of a taxable unit’ and the tax is to be laid as though the return were that ‘of a single individual.’

The more specific language of the provision in the Act of 1921, which for the present purpose is the same as that in the Act of 1934, affords a stronger basis for this conclusion. It provides specifically for the inclusion of the income of each spouse 'in a single joint return' and in that case that 'the tax shall be computed on the aggregate income.' The principle that the joint return is to be treated as the return of a 'taxable unit' and as though it were made by a 'single individual' would be violated if in making a joint return each spouse were compelled to calculate his or her charitable contributions as if he or she were making a separate return."

If a husband and wife making a joint return are to be treated as a "taxable unit" and as though the return were made by a single individual, then we think upon principle that it is clear that both parties must join or be joined in any proceeding before the Tax Court where the return or the tax liability is drawn into controversy. On principle also, we urge that a joint petition for redetermination in the Tax Court is sufficient if signed and verified by one of the parties to such joint return and joint determination of deficiency.

In case of a joint liability, we urge moreover that a joint obligor is entitled to insist that his co-obligor join him in any assertion of right or defense of liability. See

Schram v. Perkins, 38 Fed. Supp. 404, 407;

Richter v. Poppenhausen, 42 N. Y. 373, 376.

The overwhelming weight of authority is that in joint actions either party may verify the pleading.

In

Jones v. Austin (Texas), 26 S. W. 114

it was held that a joint plea verified by one defendant is available for both. See also

Butterfield v. Graves, et al., (California) 71 Pac. 510, 511.

See also

7 A. L. R., Note 2, page 36.

49 Corpus Juris, page 594, states the rule as to co-parties as follows:

“Where several persons join in a pleading, it is held as a rule, in the absence of any statutory provision to the contrary, that a verification thereof by one of them is sufficient.”

See also

41 American Jurisprudence, Sec. 283, page 485.

Conclusion

The purpose in creating the Board of Tax Appeals and its successor, the present Tax Court of the United States, was to provide a more convenient, more equitable, and more speedy remedy to a person against whom a tax is improperly assessed, and these provisions are to be liberally construed.

Houston Street Corp. v. Commissioner of Internal Revenue, 84 Fed. (2d) 822.

If the provisions of the Act itself are to be liberally construed, certainly rules of practice and procedure should receive the same construction and application, and causes should not be dismissed for technical objections as to form which go to form only and not to substance.

In

Helvering v. F. & R. Lazarus & Co., 308 U. S. 252, 84 Law Ed. 227

this Court said:

“In the field of taxation, administrators of the laws and the courts are concerned with substance and realities, and formal written documents are not rigidly binding. Congress has specifically emphasized the equita-

ble nature of proceedings before the Board of Tax Appeals by requiring the Board to act 'in accordance with the rules of evidence applicable in courts of equity of the District of Columbia.' "

The purpose of pleading is stated by this Court in
Maty v. Grasselli Chemical Co., 303 U. S. 197, 82 Law
Ed. 745,

where the Court said:

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end * * * proper pleading is important but its importance consists of its effectiveness as a means to accomplish the ends of a just judgment."

Your petitioners therefore pray that this Court grant the writ of certiorari petitioned for herein.

GEO. B. THATCHER,
THATCHER & WOODBURN,
206 North Virginia Street,
Reno, Nevada,
Counsel for Petitioners.

(5910)



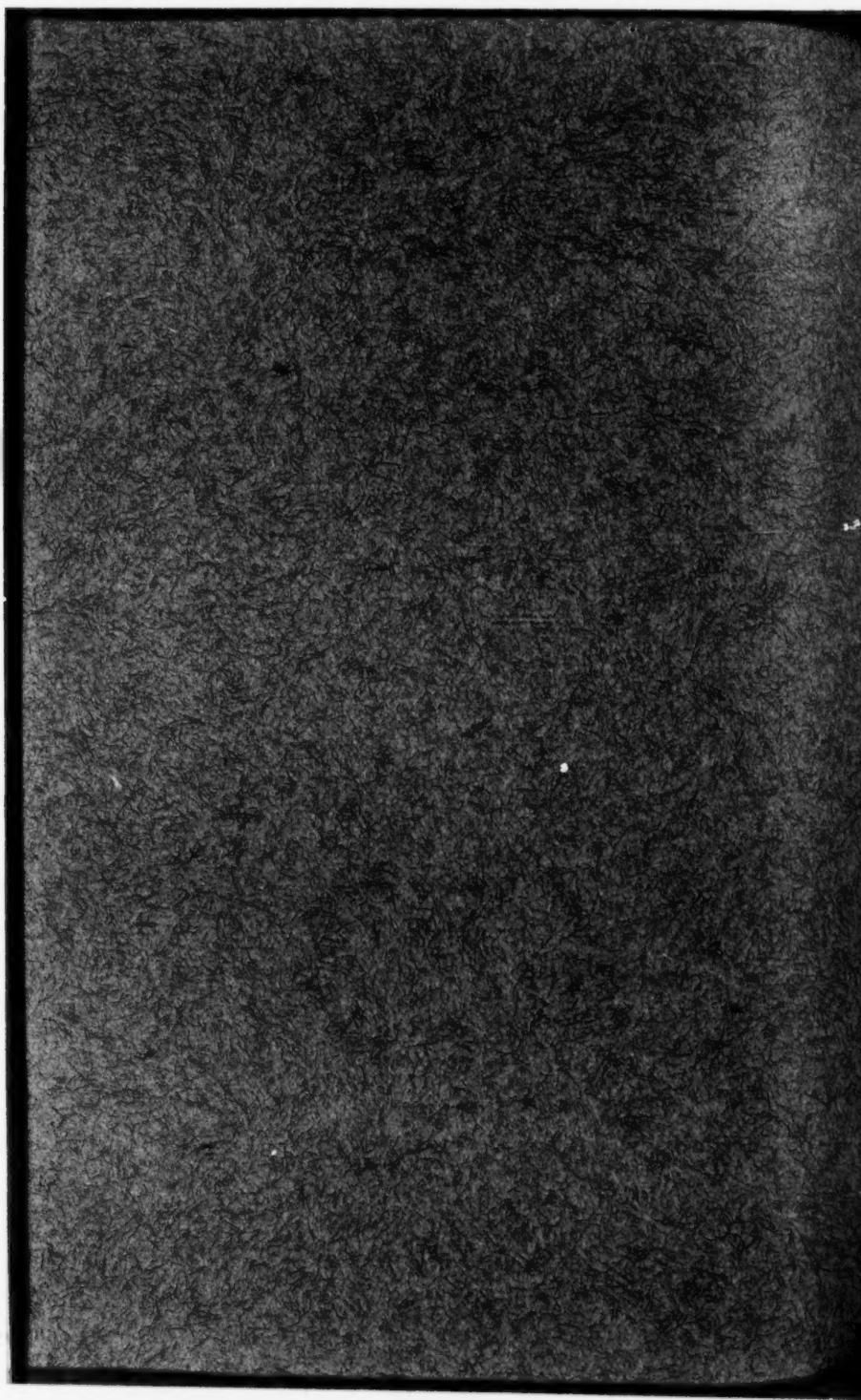
In the Supreme Court of the United States

JAMES M. [illegible]

COMMISSIONER OF [illegible]

ON PETITION FOR [illegible]
HABEAS CORPUS [illegible]
CIRCUIT [illegible]

RETURNED TO THE [illegible]



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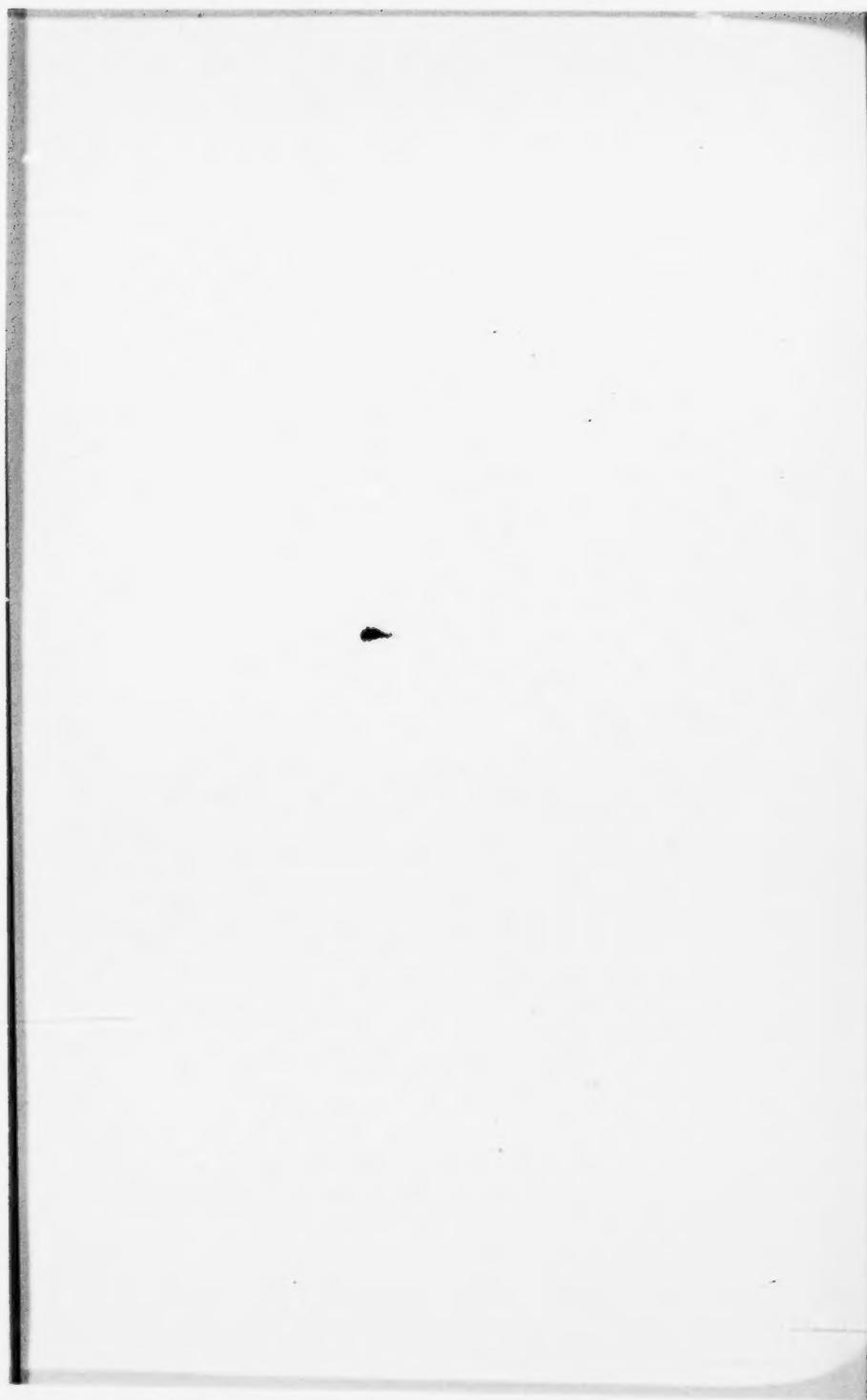
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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 842

JAMES O. GREENAN AND EDITH GREENAN,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The Tax Court of the United States did not write an opinion. The opinion of the Circuit Court of Appeals (R. 65-67) is reported at 145 F. 2d 134.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 16, 1944. (R. 68.) The petition for certiorari was filed January 15, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

3 Whether the court below erred in affirming the Tax Court's dismissal of the proceeding in so far as it related to taxpayer Edith Greenan on the ground that she had not signed or verified the petition and had not made herself a party to the proceeding.

STATUTES AND RULE INVOLVED

The relevant portions of the Internal Revenue Code and of Rule 6 of the Rules of Practice of the Tax Court are set forth in the Appendix, *infra*, pp. 14-16.

STATEMENT

The Commissioner determined deficiencies in income tax against taxpayers for the calendar years 1935, 1936 and 1938, when they were husband and wife, and also penalties for failure to file returns for 1935 and 1936. (R. 25-38.) On May 7, 1943, duplicate originals of the deficiency notice were sent separately to each of the two taxpayers, who had been divorced in 1941 and had established separate residences. (R. 8, 25, 27.)¹

A petition for redetermination of the 1936 and 1938 deficiencies and 1936 penalty was filed with

¹ The Commissioner's deficiency letter states that "duplicate originals of the joint notice of deficiency is sent to each spouse" (R. 27), but does not show that, as the Commissioner has advised us, Edith Greenan's notice was sent to her at Carmel, California, where she now resides (R. 3).

the Tax Court on July 17, 1943. (R. 1.) The petition (R. 2-24) contained the names of both taxpayers in its caption (R. 2) and commenced with the statement that (R. 2-3):

The above named petitioners, James O. Greenan and Edith Greenan, hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated May 7, 1943 * * * and as a basis and in support of their proceeding, allege as follows:

* * * * *

Paragraphs I to IV, inclusive, set forth taxpayers' addresses, jurisdictional facts, taxes involved, and assignment of errors. (R. 3-7.) Paragraph V (4), (5) and (6), purporting to contain general facts applicable to all assignments of error (R. 7), alleged (R. 8):

4. Petitioner Edith Greenan at all times stated herein was the wife of James O. Greenan, residing with him. That said parties were divorced on the 10th day of February, 1941 and that status still continues.

5. That Petitioner Edith Greenan has no knowledge of or concerning the matters and things herein alleged or of or concerning the alleged deficiency income tax the subject hereof.

6. That hereinafter the word "petitioner" will be deemed to refer only to the

petitioner James O. Greenan unless the contrary affirmatively appear.

Thereafter, the petition, repeatedly referred to the "petitioner" (R. 11-23), meaning James O. Greenan, and concluded as follows: (R. 23):

Wherefore, petitioner prays that this court hear and determine these proceedings, and upon hearing and upon the evidence adduced thereat this court find and determine that there is no deficiency in Federal Income Tax payable by the petitioner for the calendar years 1936 and 1938, and that the court grant to petitioner such other or further relief as may be meet and proper in the premises.

GEO. B. THATCHER,
Counsel for Petitioner.

Address:

206 North Virginia Street
Reno, Nevada [*sic*]

The petition was verified as follows (R. 24):

STATE OF NEVADA,
County of Washoe—ss.

James O. Greenan, being first duly sworn, deposes and says: That he is one of the petitioners above named; that he makes this verification on his own behalf and on behalf of Edith Greenan, copetitioner; that Edith Greenan has no knowledge of or concerning the matters and things involved herein; that he has read the foregoing petition and is familiar with the statements and facts

alleged therein; that the same are true of his own knowledge except as to matters therein stated on information and belief and as to such matter he believes it to be true.

JAMES O. GREENAN.

Subscribed and sworn to before me this 10th day of July, 1934.

[SEAL] AUDREY ANNETT,
Notary Public in and for the County
of Washoe, State of Nevada.

My Commission Expires May 29, 1947.

On August 10, 1943, the Commissioner simultaneously filed an answer to the petition (R. 42-46) and a motion to dismiss as to Edith Greenan because she appeared to have no interest in the proceeding and had not signed or verified the petition (R. 46-47). A hearing on the motion was held on September 22, 1943, and on September 24, 1943, the Tax Court entered an order granting the motion and dismissing the proceeding for lack of jurisdiction in so far as it related to Edith Greenan. (R. 49.) Taxpayers filed a joint petition for review of this order by the Circuit Court of Appeals for the Ninth Circuit (R. 50-53) ² and that court subsequently affirmed the action of the Tax Court (R. 65-68).

² A stipulation designating the Circuit Court of Appeals for the Ninth Circuit as the reviewing court was entered into by the parties on December 7, 1943, pursuant to Section 1141 of the Internal Revenue Code (26 U. S. C., Sec. 1141).

ARGUMENT

The issue involved in this case was correctly decided below, is not a subject of conflict among circuit courts of appeals, and is not, we submit, of sufficient general importance to warrant granting the petition for a writ of certiorari. It involves the questions (1) whether, in this case, taxpayer Edith Greenan had filed a petition for redetermination of a deficiency within the meaning of Section 272 of the Internal Revenue Code (Appendix, *infra*, pp. 14-15), which requires that the petition be that of the "taxpayer"; (2) whether the signature and verification of the petition for redetermination were sufficient as to Edith Greenan under the rules of the Tax Court, adopted pursuant to Section 1111 of the Internal Revenue Code (Appendix, *infra*, p. 15); (3) whether the verification of the petition by taxpayer James O. Greenan for himself and Edith Greenan and its signature by "Counsel for Petitioner" were sufficient to make Edith Greenan a party by reason of the fact that the Commissioner made joint deficiency determinations against the taxpayers.

1. The petition is signed by counsel for taxpayer James O. Greenan only, designated as counsel for "Petitioner" (R. 23) who, according to the allegations of the petition (R. 8), is James O. Greenan. The petition also prays for relief to

"petitioner" (James O. Greenan) and alleges that James O. Greenan and Edith Greenan were divorced in 1941 and that Edith Greenan has no knowledge of or concerning the matters and things alleged or of or concerning "the alleged deficiency income tax the subject hereof." (R. 8.) Hence, as the court below stated (R. 67), the petition "does not even purport to be the petition of Edith Greenan"; and this is so even though her name is included in the caption, and the opening paragraphs of the petition (R. 2-7) refer to the "petitioners." If the petition was intended to be that of Edith Greenan as well as that of James O. Greenan, it is only reasonable to conclude that steps would have been taken to remedy its defects, at least after the Commissioner called attention to them by filing his motion to dismiss. Leave of the Tax Court or consent of the Commissioner to an amendment of the petition might have been sought any time during the period of approximately 45 days before the motion was heard, as well as thereafter.³ No such request was made, however. Since the jurisdiction of the Tax Court depends

³ Rule 17 of the Rules of Practice before the Tax Court provides:

The petitioner may, as of course, amend his petition at any time before answer is filed. After answer is filed, a petition may be amended only by consent of the Commissioner or on leave of the Court.

upon the filing of a petition by "the taxpayer"⁴ (Section 272 (a) (1), (c) Internal Revenue Code, Appendix, *infra*, pp. 14-15) and the petition filed in this case was not that of Edith Greenan, the Tax Court rightly held that it had no jurisdiction of the proceeding as to her. Even if a contrary conclusion as to the petition was possible, it was not an abuse of discretion so to hold, and the decision was rightly sustained below.

2. Taxpayer argues (Br. 13-21) that the verification of a petition is in itself a merely formal matter, not going to the jurisdiction. However, Rule 6 (h) of the Rules of Practice before the Tax Court (Appendix, *infra*, pp. 15-16) requires that the petition be verified "by the petitioner" except where the taxpayer is outside the United States; and the court is empowered to enforce its rules. The decisions which taxpayers cite (Br. 14-18) stress the discretion of the Board (Tax Court) in regard to matters of procedure before it. See *Continental Petroleum Co. v. United States*, 87 F. 2d 91 (C. C. A. 10), quoted in petitioners' brief, p. 16, and *Baldwin v. Commissioner*, 94 F. 2d 355 (C. C. A. 9), quoted at p. 17 of their brief. In the former case the Board of Tax Appeals (Tax

⁴ Section 3797 (a) (14) of the Internal Revenue Code (26 U. S. C., Sec. 3797) defines the term "taxpayer" as "any person subject to a tax imposed by this title."

Court) had regarded the petition as valid, notwithstanding formal defects, and was sustained in doing so. There was no question that the petitions were those of the parties concerned. Here, the petition not only was improperly verified but prayed for relief to James O. Greenan only and was signed by counsel only on his behalf. There is nothing in the petition to indicate that counsel would have had authority to sign the petition for Edith Greenan or that James O. Greenan had authority to execute the purported verification in her behalf. Consequently the Tax Court proceeded within its discretion and not in conflict with its own past decisions in sustaining the motion to dismiss; for the defects in execution were serious, involving the identity of the parties as well as important matters of form.

The filing of the motion to dismiss by the Commissioner simultaneously with his answer clearly negatived, as the court below held (R. 67), any waiver which might have resulted from the answer alone even if, contrary to our contention, all of the defects in the petition were such as could be waived. Since the cause would proceed upon the merits in regard to petitioner James O. Greenan in any event, there was adequate reason for filing the motion and answer together. The Tax Court was not precluded from giving

effect to its view with regard to the sufficiency of the petition by the pleadings which the Commissioner filed.

3. Taxpayers' argument that, because husband and wife making a joint return may be treated as a "taxable unit" and because an obligor is entitled to insist that his co-obligor join with him in any assertion of right or defense of liability, the taxpayers are to be treated as one in this proceeding (Br. 25), is unsound as applied to this case. The taxpayers did not file joint returns and are not joint obligors for the asserted tax deficiencies. The petition contests the deficiency determinations of the Commissioner for the calendar years 1936 and 1938 as to tax liability on capital gains from the disposition of shares of stock received by James O. Greenan as compensation for services while he and Edith Greenan were married and residing in the Philippine Islands. (R. 4-38.) Neither taxpayer filed an income tax return for 1936. A return was filed for 1938 which, although the record does not disclose the fact in the matter, was actually signed by James O. Greenan only and accordingly was not a joint return.

The 1938 deficiency assessment (R. 31-33) is based upon the return filed by James O. Greenan for that year and he, if anyone, is primarily liable for the tax involved and also for the 1936

deficiency. In the absence of joint returns,⁵ the earnings and the liability are attributable to Edith Greenan only severally and in part, if at all, by virtue of community property laws.⁶ The Commissioner's sending of a joint notice of deficiencies did not work a change in this regard, for such a notice is contemplated by the statute (Internal Revenue Code, Sec. 272 (a) (1), Appendix, *infra*, p. 14) only in case a joint return has been filed. James O. Greenan's individual tax liability will be determined in the proceeding

⁵ If taxpayers had filed joint returns for 1938 their liability for 1938 would be joint and several pursuant to Section 51 (b) of the Revenue Act of 1938, c. 289, 52 Stat. 447. The nature of their liability for 1936, if they had filed a joint return, is not entirely clear. The Revenue Act of 1936 did not contain a provision respecting liability in such cases. By the decisions of several circuits, the wife is liable for tax only on her individual income. *Cole v. Commissioner*, 81 F. 2d 485 (C. C. A. 9th); *Crowe v. Commissioner*, 86 F. 2d 796 (C. C. A. 7th); *Commissioner v. Rabenold*, 108 F. 2d 639 (C. C. A. 2d); *Commissioner v. Uniacke*, 132 F. 2d 781 (C. C. A. 2d). It was held in some cases, however, that the liability was joint and several. *Rogers v. Commissioner*, 111 F. 2d 987 (C. C. A. 6th); *Moore v. United States*, 37 F. Supp. 136 (C. Cls.). Cf. *Helvering v. Janney*, 311 U. S. 189; *Taft v. Helvering*, 311 U. S. 195. The matter is now settled by Section 51 (b) of the Internal Revenue Code, 26 U. S. C., Sec. 51 (b), which renders the liability joint and several for taxable years beginning with 1939.

⁶ The parties were apparently domiciled in Nevada during the taxable years and the income in question was earned in the Philippine Islands. Community property laws apply in both Nevada and the Philippine Islands.

before the Tax Court, and Edith Greenan need not be a party to the proceeding. If the Commissioner should collect any portion of the deficiencies from her either before or after the termination of the proceeding, she will have her remedy in the form of a suit for refund. There is, accordingly, nothing in the nature of the taxpayers' liability or of the proceeding itself which renders improper the dismissal by the Tax Court as to Edith Greenan. The decision below, affirming the action of that court, was correct.

* * * * *

As the court below pointed out (R. 67), the justification for a dismissal in this case is stronger than in *Schwartz v. Commissioner*, 40 F. 2d 956 (C. C. A. 9), which presented somewhat similar facts. A petition for certiorari was granted in that case (322 U. S. 724) but was dismissed October 2, 1944, pursuant to stipulation of counsel. In that case the wife, Marie Schwartz, had not signed or verified an original petition for redetermination. Following the Commissioner's motion to dismiss, an amended petition was filed but, as the Circuit Court of Appeals found, was improperly verified in behalf of the wife. There was no question in that case that the petition was in substance that of both parties. The Tax Court's dismissal as to the wife was nevertheless sustained in the Circuit Court of Appeals.

CONCLUSION

The case was correctly decided below and involves no conflict of decisions or important question of law. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.

SAMUEL O. CLARK, Jr.,
Assistant Attorney General.

SEWALL KEY,
ROBERT N. ANDERSON,
MELVA M. GRANNEY,
Special Assistants to the Attorney General.

FEBRUARY, 1945.

APPENDIX

Internal Revenue Code:

SEC. 272. PROCEDURE IN GENERAL.

(a) (1) *Petition to Board of Tax Appeals.*—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. * * * In the case of a joint return filed by husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address.

* * * * *

(c) *Failure to File Petition.*—If the taxpayer does not file a petition with the Board within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector. (26 U. S. C., Sec. 272.)

SEC. 1111. RULES OF PRACTICE, PROCEDURE, AND EVIDENCE.

The proceedings of the Board and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Board may prescribe * * *. (26 U. S. C., Sec. 1111.)

Rules of Practice before The Tax Court of the United States (Revised to February 9, 1943):

RULE 6—INITIATION OF A PROCEEDING—PETITION.

A proceeding shall be initiated by filing with the Court a petition, as provided in Rules 4, 5, and 8, and substantially in accordance with Form 2, shown in Appendix I. (See Rule 7.) The petition shall be complete in itself so as fully to state the issues. It shall contain:

* * * * *

(g) The signature of the petitioner or that of his counsel. (See Rule 4.)

(h) A verification by the petitioner; provided that where the petitioner is sojourning outside the United States or is a non-resident alien, the petition may be verified by a duly appointed attorney in fact, who shall attach to the petition a copy of the power of attorney under which he acts and who shall state in his verification that he acts pursuant to such power, that such

power has not been revoked; that petitioner is absent from the United States, and the grounds of his knowledge of the facts alleged in the petition. As used herein the term "United States" includes only the States and the District of Columbia. A notary public is not authorized to administer oaths, etc., in matters in which he is employed as counsel. (See title 1, ch. 5, D. C. Code 1940, and 26 Op. A. G. 236.)

The verification shall contain a statement that the fiduciaries signing and verifying have authority to act for the taxpayer.

Where the petitioner is a corporation, the person verifying shall state in his verification that he has authority to act for the corporation.

The signature and the verification to the petition shall be considered the certificate of those performing these acts that there is good ground for the petition, the proceeding has not been instituted merely for delay, and it is not frivolous.

* * * *

